

## Nuclear Regulatory Commission

## § 2.1322

is not the Commission or a Commissioner, the Commission will decide the matter.

(c) If any person presiding deems himself or herself disqualified, he or she shall withdraw by notice on the record after notifying the Commission.

(d) If a Presiding Officer becomes unavailable, the Commission will designate a replacement.

(e) Any motion concerning the designation of a replacement Presiding Officer shall be made within 5 days after the designation.

(f) Unless otherwise ordered by the Commission, the jurisdiction of a Presiding Officer other than the Commission commences as designated in the hearing notice and terminates upon certification of the hearing record to the Commission, or when the Presiding Officer is disqualified.

### **§ 2.1320 Responsibility and power of the Presiding Officer in an oral hearing.**

(a) The Presiding Officer in any oral hearing shall conduct a fair hearing, develop a record that will contribute to informed decisionmaking, and, within the framework of the Commission's orders, have the power necessary to achieve these ends, including the power to:

(1) Take action to avoid unnecessary delay and maintain order;

(2) Dispose of procedural requests;

(3) Question participants and witnesses, and entertain suggestions as to questions which may be asked of participants and witnesses.

(4) Order consolidation of participants;

(5) Establish the order of presentation;

(6) Hold conferences before or during the hearing;

(7) Establish time limits;

(8) Limit the number of witnesses; and

(9) Strike or reject duplicative, unreliable, immaterial, or irrelevant presentations.

(b) Where the Commission itself does not preside:

(1) The Presiding Officer may certify questions or refer rulings to the Commission for decision;

(2) Any hearing order may be modified by the Commission; and

(3) The Presiding Officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented.

### **§ 2.1321 Participation and schedule for submission in a hearing consisting of written comments.**

Unless otherwise limited by this subpart or by the Commission, participants in a hearing consisting of written comments may submit:

(a) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials shall be filed within 30 days of the date of the Commission's Notice granting a hearing pursuant to § 2.1308(d)(1), unless the Commission or Presiding Officer directs otherwise.

(b) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants, and proposed written questions for the Presiding Officer to consider for submittal to persons sponsoring testimony submitted under paragraph (a) of this section. These materials shall be filed within 20 days of the filing of the materials submitted under paragraph (a) of this section, unless the Commission or Presiding Officer directs otherwise. Proposed written questions directed to rebuttal testimony for the Presiding Officer to consider for submittal to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(c) Written concluding statements of position on the issues. These materials shall be filed within 20 days of the filing of the materials submitted under paragraph (b) of this section, unless the Commission or the Presiding Officer directs otherwise.

### **§ 2.1322 Participation and schedule for submissions in an oral hearing.**

(a) Unless otherwise limited by this subpart or by the Commission, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the issues. These

## **§ 2.1323**

materials shall be filed within 30 days of the date of the Commission's notice granting a hearing pursuant to § 2.1308(d)(1), unless the Commission or Presiding Officer directs otherwise.

(2)(i) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants;

(ii) Proposed questions for the Presiding Officer to consider for propounding to persons sponsoring testimony.

(3) These materials must be filed within 20 days of the filing of the materials submitted under paragraph (a)(1) of this section, unless the Commission or Presiding Officer directs otherwise.

(4) Proposed questions directed to rebuttal testimony for the Presiding Officer to consider for propounding to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(b) The oral hearing should commence within 65 days of the date of the Commission's notice granting a hearing unless the Commission or Presiding Officer directs otherwise. Ordinarily, questioning in the oral hearing will be conducted by the Presiding Officer, using either the Presiding Officer's questions or questions submitted by the participants or a combination of both.

(c) Written post-hearing statements of position on the issues addressed in the oral hearing may be submitted within 20 days of the close of the oral hearing.

(d) The Commission, on its own motion, or in response to a request from a Presiding Officer other than the Commission, may use additional procedures, such as direct and cross-examination, or may convene a formal hearing under subpart G of this part on specific and substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing. The staff will be a party in any such formal hearing. Neither the Commission nor the Presiding Officer will entertain motions from the parties that request such special procedures or formal hearings.

## **10 CFR Ch. I (1-1-04 Edition)**

### **§ 2.1323 Presentation of testimony in an oral hearing.**

(a) All direct testimony in an oral hearing shall be filed no later than 15 days before the hearing or as otherwise ordered or allowed pursuant to the provisions of § 2.1322.

(b) Written testimony will be received into evidence in exhibit form.

(c) Participants may designate and present their own witnesses to the Presiding Officer.

(d) Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations for that purpose.

(e) Participants and witnesses will be questioned orally or in writing and only by the Presiding Officer. Questions may be addressed to individuals or to panels of participants or witnesses.

(f) The Presiding Officer may accept written testimony from a person unable to appear at the hearing, and may request him or her to respond to questions.

(g) No subpoenas will be granted at the request of participants for attendance and testimony of participants or witnesses or the production of evidence.

### **§ 2.1324 Appearance in an oral hearing.**

(a) A participant may appear in a hearing on her or his own behalf or be represented by an authorized representative.

(b) A person appearing shall file a written notice stating her or his name, address and telephone number, and if an authorized representative, the basis of her or his eligibility and the name and address of the participant on whose behalf she or he appears.

(c) A person may be excluded from a hearing for disorderly, dilatory or contemptuous conduct, provided he or she is informed of the grounds and given an opportunity to respond.

### **§ 2.1325 Motions and requests.**

(a) Motions and requests shall be addressed to the Presiding Officer, and, if written, also filed with the Secretary and served on other participants.

(b) Other participants may respond to the motion or request. Responses to